



Decision

PR

Matter of: Roadway Express, Inc.

File: B-234430

Date: July 17, 1990

DIGEST

Where the government has made a prima facie case of carrier liability for the unexplained loss of a carton, the burden then shifts to the carrier to show that it was not negligent and that the loss was due to an excepted cause. The carrier has not rebutted the government's prima facie case merely by showing that it returned a similar carton found on a trailer that it says should have carried the missing item from the carrier's origin terminal to a second terminal, where the returned carton was marked for a different destination than was the lost one; involved a slightly different weight; showed a different Terminal Control Number; and was found on a different trailer than the one used to pick the missing item up at origin.

DECISION

Roadway Express, Inc., requests review of a settlement by our Claims Group denying the firm's claim for reimbursement of amounts setoff by the United States Army Finance and Accounting Center (USAFAC) for the unexplained loss of a 72-pound swashplate.^{1/} The Claims Group's settlement is affirmed.

On February 19, 1986, a Government Bill of Lading (GBL) was issued at Dover Air Force Base, Delaware, for transportation of the swashplate as "freight all kinds" to Red River Army Depot in Texarkana, Texas. Roadway's agent acknowledged receipt on the same day of a 72-pound carton under Terminal Control Number (TCN) WK4GGD-6030-0908, but within 48 hours the firm notified Dover that the carton was missing from the shipment.

The carrier contends that in lieu of receiving the carton destined for Red River, it actually received a 76-pound carton without a bill of lading, marked for Corpus Christi, Texas. As proof of this, the carrier states that the 76-pound carton

^{1/} A swashplate is a device used to control the pitch of rotors on a helicopter.

was found on the trailer that would have carried the swashplate toward Red River between the carrier's origin terminal and a second terminal. Roadway returned the 76-pound carton to Dover on March 21, 1986.

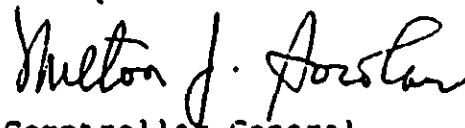
The Army says that the returned carton was not the swashplate, but a different item weighing 76 pounds. The carton also had a different TCN than did the 72-pound shipment. USAFAC points out that according to the record the swashplate in fact was tendered to the carrier, and says that a search of the Dover activity for the 72-pound carton met with negative results.

A carrier is presumed liable for loss upon a showing by the shipper that it delivered the item to the carrier, that the item did not arrive at destination, and the amount of damages. Thereafter, the carrier has the burden of proving by clear and convincing evidence both its freedom from negligence and that the loss was due to a recognized exception to the rule. Missouri Pacific R.R. Co. v. Elmore & Stahl, 377 U.S. 134, 137-138 (1964); National Freight Claim Council, B-200549, Nov. 18, 1980, and decisions cited therein.

Roadway does not contest the amount of the damages (\$3,568 plus interest and other fees, totaling \$4,342.96). Roadway contends, however, that it has overcome the Army's evidence of delivery to the company. Roadway maintains that it has proven that it actually was given the wrong carton because it has presented a different carton the firm maintains it received from Dover, without a bill of lading, about the same time and weighing nearly the same amount.

In our view, Roadway has not established that the 76-pound carton it returned to Dover was the same one the Army tendered to the firm and which the agency says contained the swashplate. The 76-pound carton was labeled for Corpus Christi, not Red River, and had a different TCN than did the Red River shipment. While close, the weights of the two cartons were not the same. The carrier acknowledged receipt of a 72-pound carton at Dover, and the Army reports that a search of the Dover activity has failed to uncover the swashplate. Finally, the heavier carton was found on the trailer that should have transported the missing item from the carrier's origin terminal to the next terminal, which was not the same trailer involved in the receipt of the shipment at origin.

In sum, Roadway has not rebutted the Army's prima facie case of liability against it for not delivering the swashplate for which the carrier signed at Dover. We therefore affirm our Claims Group's denial of Roadway's claim.

for 
Comptroller General
of the United States

PROCUREMENT

Payment/Discharge

Shipment

Carrier liability

Burden of proof